

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1299 of 2004

1.Veeramani

2.Gunavathy

.. Petitioners

Vs.

State rep by
The Sub-Inspector of Police,
Jolarpet Police Station,
Vellore District,
(Crime No.1155/1992)

.. Respondent

Prayer:- This revision has been preferred against the judgment dated 27.4.2004 in Crl.A.No.20 of 2002 passed by the Additional District and Sessions Judge, Thiruppathur, (FTC) Vellore, partly allowing the judgment in S.C.No.29 of 1995 on the file of the Assistant Sessions Judge, Thirupapathur, Vellore District, dated 15.02.1996.

For Petitioners :Mr.E.Kannadasan

For Respondents :Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

This revision has been preferred against the judgment in C.A.20 of 2002 on the file of the Additional District and Sessions Judge, Thiruppathur, which emanates from the judgment in S.C.No.29 of 1995 on the file of the Assistant Sessions Judge, Thiruppathur, Vellore District. A1 is the husband of the deceased Etharani and A2 is the mother-in-law of the deceased.

2.The case was taken on file by the Judicial Magistrate No.I, Tiruppathur and on appearance of the accused on summons copies under Section 207 of Cr.P.C., were furnished to the accused. When charges under section 498(a) and 304(B) IPC

were framed and questioned, the accused pleaded not guilty. Before the trial Court P.W.1 to P.W.8 were examined and Ex.P.1 to P.10 and M.O.1 were marked.

3.P.W.1 and P.W.2 are the brothers of the deceased. According to P.W.1, the marriage between the deceased Etharani and A1 was solemnized some six years prior to the date of occurrence. P.W.1 would depose that on one occasion the deceased Etharani had complained of the accused that they have demanded Rs.5,000/- and asked her to bring the same from her brother and on one occasion his sister had complaint of her husband and her mother-in-law used to pick up quarrel with her and also on one occasion the accused necked her out of the house and that even during the first delivery even after lapse of 4 months no one from her husband side came and saw her and that he was never allowed by the accused to see his sister thereafter and that for the past two years he did not see his sister and that on 2.2.1992 he heard that his sister has committed suicide.

4.P.W.2 is another bother of the deceased. He has also corroborated the evidence of P.W.1.

5.P.W.3 is an independent witness. According to her, the deceased Etharani used to complain about her husband and her mother-in-law that from morning till 11.00 pm they used to extract work from her and that there was also a complaint preferred by the brother of the deceased and that the mediation effected between the brothers of the deceased and A1 ended in vain and that on the date of occurrence also the deceased Etharani had complained to her that her mother-in-law had abused her at the time when she was taking her meals and also instigated her to commit suicide instead of taking meals and that at about 9.00 pm A2 had informed her the daughter-in-law had committed suicide.

6.P.W.4 is the doctor, who has conducted autopsy on the corpse of the deceased Etharani and issued Ex.P.2-postmortem certificate. Ex.P.3 is the chemical analyst's report. The Doctor has opined that Etharani had died due to asphyxia due to the suicide by hanging.

7.P.W.5 is the Sub-Collector, who had conducted an enquiry and filed Ex.P.4-report stating that the deceased had committed suicide only due to the cruelty meted out at the hands of the accused.

8.P.W.6 is the panchayatdar. He would also admit that he had mediated between the family of the deceased and the

family of the accused and that on one occasion a complaint was preferred by P.W.1, the brother of Etharani, with the police, who have effected a settlement between the parties. According to him, the deceased Etharanai had complaint about the accused even after the settlement. After the occurrence, police have visited the place of occurrence and prepared Ex.P.5-mahazar in his presence and recovered M.O.1-rope which was used by the victim to commit suicide under Ex.P.6-mahazar.

9.P.w.7 is the Sub-Inspector of Police, who had recorded the complaint Ex.P.1 under Cr.No.1155 of 1992 under Section 174 of Cr.P.C.

10.P.W.8 is the Inspector of Police, who had visited the place of occurrence and prepared observation mahazar and had drawn a rough sketch in the presence of the witnesses and had examined the witnesses and recorded their statements. After altering the charge into Section 304(a) and 498(A) IPC, he had filed the chargesheet.

11.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., they denied their complicity with the crime. After hearing the arguments of the counsel on either side and after going through the evidence let in before the Court, the learned trial judge has convicted A1 & A2 under Section 498(A) IPC and also under Section 304(B) IPC and sentenced to undergo 2 years RI and a fine Rs.500/- under section 498(A) IPC and sentenced to undergo 7 years RI under Section 304(B) IPC to each of the accused. Aggrieved by the findings of the learned trial judge, the accused have preferred an appeal before the Additional Sessions Judge, Tiruppathur. The learned first appellate Judge, after scanning the evidence both oral and documentary let in before the trial Court and also after meticulously considering the findings of the learned trial Judge has confirmed the conviction and sentence imposed by the learned trial judge under Section 498(A) IPC, but set aside the conviction and sentence imposed under Section 304 (B). Against the conviction under Section 498(A) IPC the accused have preferred this appeal.

12.Now the point for determination in this appeal is whether the conviction and sentence of the Courts below under Section 498(A) IPC against A1 & A2 is liable to be set aside for the reasons stated in the memorandum of revision?

13.When the revision was taken up for hearing the learned counsel appearing for the revision petitioners

Mr.E.Kannadasan would represent that he is not going to argue on merits but he will confine himself only in respect of the sentence. For modification of the sentence, the learned counsel for the revision petitioners would submit that after the occurrence both the children were only under his(A1's) care and he(A1) is maintaining them and that the eldest daughter is going to be married very soon and he is making all arrangements for the early marriage of his daughter and the son is studying in 9th standard and his educational expenses are also being met by him and if the accused A1 & A2 are once again sent to prison then there will not be any one to look after the minor boy and the marriage of his daughter will come to a grinding halt and the son may not be also in a position to pursue his higher studies. The learned counsel further submits that both A1 & A2 were in prison for three months after conviction.

14.Taking into consideration the plight of the children, in case if both the accused were sent to prison to spend the unexpended portion of the sentence awarded by the Court below, the children will be put to untold hardship and there will not be any one to look after them and practically they will be left in the lurch. The learned counsel also gave an undertaking that he will see that A1 will spend his remaining part of his life only for the welfare of his children and he will not marry for the second time. Under such circumstances, I am of the view that three months RI can be awarded as a sentence under Section 498(A) IPC instead of two years RI.

15.In fine, the revision is dismissed confirming the conviction of A1 & A2 passed by the Additional District and Sessions Judge, Thiruppathur, (FTC) Vellore, in Crl.A.No.20 of 2002, but the sentence alone is modified to that of the period already under gone instead of two years RI for A1 & A2. The fine imposed by the Courts below will sustain.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To

1.The Additional District & Sessions Judge,
FTC, Tiruppathur, Vellore.

2.The Principal District Judge, Vellore.

3.The Judicial Magistrate No.I,
Thiruppathur.

4.-do-The Chief Judicial Magistrate, Vellore.

5.The Public Prosecutor, High Courts, Madras.

6.The Sub-Inspector of Police,
Jolarpet Police Station,
Vellore (Cr.No.1155 of 1992)

7.The Superintendent Central Prison, Vellore.

8.The Superintendent,
Special Prison for Women,
Vellore.

+lcc to Mr.T.S.Kannaiyan, Advocate Sr 43618

SA (CO)
km/27.7.

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